No. 83-1140

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1983

THE STATE OF ARIZONA, et al.,
Petitioners

vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY and
THE SOUTHERN PACIFIC
TRANSPORTATION COMPANY
Respondents.

BRIEF OF RESPONDENT, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

DOES 49 U.S.C. § 11503, WHICH SPECIFICALLY EMPOWERS THE UNITED STATES DISTRICT COURTS TO ISSUE INJUNCTIVE RELIEF TO PREVENT A VIOLATION OF THE STATUTE, REQUIRE THE COURT TO APPLY TRADITIONAL EQUITABLE STANDARDS BEFORE GRANTING A PRELIMINARY INJUNCTION TO PREVENT AN IMMINENT VIOLATION OF THE STATUTE?

LIST OF THE PARTIES

Respondents, the Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") and Southern Pacific Transportation Company ("Southern Pacific") filed separate suits against the petitioners below.[1] The cases were consolidated for a joint hearing on the railroads' requests for a preliminary injunction against the collection of the second installment 1982 property taxes. Because both railroads still have separate lawsuits pending, Santa Fe and Southern Pacific have filed separate Briefs in Opposition to the Petition for Writ of Certiorari.

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1. Santa Fe and Southern Pacific transact business in different counties within the State of Arizona. Hence, while all of the counties (except La Paz County which officially came into existence on January 1, 1983) are named as defendants in the underlying suits, Santa Fe's action is only directed against the state entities and the counties of Apache, Coconino, Maricopa, Mohave, Navajo, Yavapai and Yuma.

Pursuant to Rule 28.1, Supreme Court of the United States Revised Rules, Respondent, The Atchison, Topeka and Santa Fe Railway Company submits the following list of parent, subsidiary and affiliated corporations. Respondent is a wholly-owned subsidiary of Santa Fe Industries, Inc., which is a Delaware corporation. Effective December 23, 1983, Santa Fe Industries, Inc. merged with Southern Pacific Company (the parent corporation of Respondent Southern Pacific Transportation Company), to form Santa Fe Southern Pacific, Inc., a Delaware corporation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Legislative History

PREFATORY NOTE

Pursuant to Rule 34.2, Supreme Court of the United States Revised Rules, Santa Fe will not add to petitioners' references to the opinions and judgments delivered by the courts below or the petitioners' jurisdictional statement. However, because the petitioners only set forth part of the relevant statute, Santa Fe has reproduced 49 U.S.C. § 11503 in its entirety in the Appendix to this Brief.

STATEMENT OF THE CASE

Santa Fe has no fundamental disagreement with petitioners' Statement of the Case. However, Santa Fe does wish to clarify one point concerning the decision of the district court.

While it is true that the district court did ultimately conclude that the equitable considerations raised by the petitioners were irrelevant, it nonetheless examined the merits of the

"equitable considerations" argument. As the district court stated:

> Even if equitable considerations were allowed to play a role in this decision, however, the injunction should not be denied on this basis. The counties may suffer budget deficits this year because they failed to anticipate the issuance of an injunction. But it cannot be argued seriously that the State and counties have not been put on notice that their tax practices have been discriminatory and would violate the 4-R Act when it came into effect. Moreover, the counties' responsibility for this violation of the 4-R Act is underscored by the fact that their appraisal practices clearly violate A.R.S. § 42-201(4), which requires that property be appraised at true market value.

Petition at A-29 (emphasis added).

Thus, assuming arguendo that Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982), is inconsistent with the Ninth Circuit's reliance on Trailer Train Co. v. State Board of Equalization, 697 F.2d 860 (9th Cir. 1983), cert. denied, __ U.S. __, 104 S. Ct. 149 (1983), the district court's decision was nonetheless, properly affirmed.

SUMMARY OF ARGUMENT

Contrary to petitioners' assertions, the Court of Appeals' decision is not in conflict with the previous decisions of this Court in statutory injunction cases. The rule in these cases has always been that the district courts should exercise their equitable discretion "in light of the large objectives of the [legislation]." Hecht Co. v. Bowles, 321 U.S. 321, 331 (1944).

The statute under consideration in this case, 49 U.S.C. § 11503, was enacted "to eliminate the long-standing burden against interstate commerce resulting from discriminatory state and local taxation of [rail] transportation property." S. Rep. No. 1483, 90th Cong., 2d Sess. at 1. Congress concluded that it was imperative that a federal court procedural remedy be made available to railroads to prevent such discrimination. The statute declares

certain acts unlawful and expressly confers jurisdiction on the federal courts to "prevent" violations, after the requisite showing of discrimination is made.

In this case, Santa Fe established that a violation of the statute was imminent, that the level of discrimination exceeded the minimum threshhold required by the statute, and that it was likely to succeed on the merits. This showing was sufficient to support the district court's order granting a preliminary injunction. To date, every case which has confronted the issue of whether 49 U.S.C. § 11503 authorizes the issuance of injunctive relief based upon such a showing has held that it does.

ARGUMENT

A. The Ninth Circuit's Decision In This Case Is Consistent With This Court's Opinion In Weinberger v. Romero-Barcelo.

The plain language of 49 U.S.C. § 11503 confers jurisdiction upon the district

courts to "prevent a violation of subsection (b) of this section." 49 U.S.C. § 11503(c). In spite of this, petitioners contend that the Ninth Circuit's decision in this case is inconsistent with this Court's opinion in Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982). Petitioners insist that 49 U.S.C. § 11503 requires the application of traditional equity principles before a preliminary injunction can be granted. Petitioners misread Weinberger.

In Weinberger, the district court denied plaintiff's motion to enjoin immediately discharges of pollutants which did not comply with the permit requirements of the Federal Water Pollution Control Act ("FWPCA"). The court of appeals vacated and remanded with orders to grant the injunction because, the court concluded, the FWPCA had effectively withdrawn the district court's equitable discretion, and

the district court had no authority to fashion any relief other than a prohibitory injunction to prevent the violation of the statute. Upon review, the Supreme Court reversed the court of appeals, holding that "Congress, in enacting the FWPCA, [had] not foreclosed the exercise of equitable discretion. . ." 456 U.S. at 320.

In the Weinberger opinion the Court considered whether the grant of jurisdiction to insure compliance with a statute through injunctive relief imposes an absolute duty to grant an injunction when a violation is about to occur. The Court in Weinberger held that in some circumstances a court may exercise its discretion to withhold injunctive relief. Weinberger distinguished between the FWPCA and the "Endangered Species Act" discussed in TVA v. Hill, 437 U.S. 153 (1978). In Hill, the Court had held that an imminent

violation of the Endangered Species Act required the district court to issue injunctive relief. Referring to its decision in Hill, the Weinberger Court stated:

> [W]e held that Congress had foreclosed the exercise of the usual discretion possessed by a court of equity. There, we thought that "[o]ne would be hard pressed to find a statutory provision whose terms were any plainer" than that before us. 437 U.S. at 173. The statute involved, the Endangered Species Act, 87 Stat. 884, 16 U.S.C. § 1531 et seq., required the District Court to enjoin completion of the Tellico Dam in order to preserve the snail darter, a species of perch. The purpose and language of the statute under consideration in Hill, not the bare fact of a statutory violation, compelled that conclusion. . . . The statute thus contains a flat ban on the destruction of critical habitats.
>
> It was conceded in Hill that completion of the dam would eliminate an endangered species by destroying its critical habitat. Refusal to enjoin the action would have ignored the "explicit provisions of the Endangered Species Act." 437 U.S. at 173. Congress, it appeared to us, had chosen the snail darter over the dam. The purpose and language of the

> statute limited the remedies available to the District Court; only an injunction could vindicate the objectives of the Act.

Id. at 313-14 (emphasis added).

The same reasoning applied by this Court in distinguishing Hill from Weinberger can be applied to this case. Just as in Hill, refusal to enjoin the collection of taxes in violation of 49 U.S.C. § 11503 would ignore the explicit provisions of the 4-R Act. Like the statute under consideration in Hill, it is obvious that Congress has imposed a "flat ban" on discrimination against rail transportation property. 49 U.S.C. § 11503(b). In fact, the statute under consideration in Hill is even less clear than 49 U.S.C. § 11503 as regards the district court's jurisdiction. Under 49 U.S.C. § 11503 certain acts are declared to be unlawful and jurisdiction is conferred "to prevent a violation of [the statute]." 49 U.S.C. § 11503(c). The statute in Hill (16

U.S.C. § 1531 et seq.) also declares certain acts unlawful (e.g., the destruction of an endangered species), but simply confers jurisdiction to "issue such warrants or other process as may be required for enforcement of this chapter and any regulation issued thereunder." 16 U.S.C. § 1540(e)(2). In contrast to Weinberger and the FWPCA, the cases which have construed these two statutes have clearly held that injunctions are necessary to "vindicate the objectives of the legislation.

Moreover, in Weinberger, the district court specifically found that the discharge of ordnance by the Navy had not polluted the Puerto Rican coastal waters. Therefore, the district court concluded (and this Court agreed), since compliance with the permit[3] provisions of the FWPCA would adequately satisfy the requirements of the statute and protect the quality of

the coastal water, the district court's order requiring the Navy to apply for a permit was obviously sufficient to insure compliance with the law. Such is obviously not the case here.

During the 15 years predating the enactment of 49 U.S.C. § 11503, Congress heard extensive testimony which demonstrated that discriminatory overtaxation of railroad property was a pervasive, national problem.[2] Congress determined that such discrimination imposed an undue burden on the nation's railroads and the national economy:

> In the last 9 years, the railroads alone have been assessed more than $900 million in discriminatory taxes.

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2. The legislative history underlying 49 U.S.C. § 11503 identifies Arizona as one of the worst offenders in regard to property tax discrimination against railroads. See, e.g., S. Rep. No. 92-1085, 92d Cong., 1st Sess. at 6 (1972); S. Rep. No. 91-630, 91st Cong., 1st Sess. at 5 (1969); S. Rep. No. 1483, 90th Cong., 2d Sess. at 4 (1968).

> . . . Not only are such taxes reflected in the transportation costs of goods purchased by the consumer, but also the consumers of States which do not discriminate are forced to share the cost of these burdensome tolls.
>
> The committee joins the Interstate Commerce Commission in recommending enactment of this legislation to eliminate the discriminatory tax practices weakening our national transportation system and burdening the nation's consumers.

S. Rep. No. 92-1085, 92d Cong., 2d Sess. at 3-4 (1972); S. Rep. No. 91-630, 91st Cong., 1st Sess. at 3 (1969). Congress believed that the problems caused by states' discriminatory taxation would continue unless a strong national policy overcame the states' unwillingness to grant the railroads equal tax treatment:

> Year after year the States have asked for postponement of action on legislation such as [49 U.S.C. § 11503] to put their house in order. The committee agrees with the views of the Department of Transportation that "it has been demonstrated in several studies and hearings on this subject that discriminatory taxation of surface carrier property

> is widespread whether under color of law or not. While the States . . . have made some progress in the area of discriminatory assessments, backsliding is always present unless there is a positive national policy in the picture."

S. Rep. No. 91-630, 91st Cong., 1st Sess. at 15 (1969) (emphasis added).

Because railroads had been unable to obtain effective relief from state agencies and courts, Congress concluded that a new federal remedy was necessary and, more important, that access to federal courts to enforce this remedy was essential.[3] Arizona's history of property tax discrimination, especially since the passage of 49 U.S.C. § 11503, therefore distinguishes this case from the activities engaged in by the Navy in Weinberger,

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3. Arizona's courts have traditionally been unsympathetic to the railroads' claims of persistent discrimination in property taxation. See, e.g., Apache County v. Atchison, Topeka & Santa Fe Railway Co., 106 Ariz. 356, 476 P.2d 657 (1970), appeal dismissed, 401 U.S. 1005 (1971); Southern Pacific Co. v. Cochise County, 92 Ariz. 395, 377 P.2d 770 (1963).

which this Court held non-violative of the provisions of the FWPCA. As the Court in Weinberger stated in conclusion:

> Should it become clear that no permit will be issued and that compliance with the FWPCA will not be forthcoming, the statutory scheme and purpose would require the court to reconsider the balance it has struck.

Id. at 320.

Petitioners' analysis ignores the entire thrust of this Court's opinion in Weinberger. Weinberger does not purport to overrule TVA v. Hill. Rather, the Court's opinion simply indicates that there are factual circumstances under some federal statutes where an injunction is not needed to insure compliance with the law. In those cases, the courts retain their inherent discretion to fashion less drastic relief. Weinberger reaffirms the long established rule that in statutory injunction cases the breadth of the district court's discretion is to be

considered in light of the objectives of the legislation. This is particularly clear from this Court's repeated references in Weinberger to its earlier decision in Hecht Co. v. Bowles, 321 U.S. 321 (1944).

In Hecht, the Court refused a request by the Price Administrator for an injunction to prevent future violations of the Emergency Price Control Act of 1942. The Court's decision in Hecht relied in large part on two facts which distinguish it from this case. First, the statute on its face gave the district court discretion to issue a "permanent or temporary injunction, restraining order, or other order. . . ." Id. at 328 (emphasis added). Second, the Court noted:

> [T]he District Court concluded that the "mistakes in pricing and listing were all made in good faith and without intent to violate the regulations."
>
> The District Court also found that the mistakes brought to light

> "were at once corrected, and vigorous steps were taken by The Hecht Company to prevent recurrence of these mistakes or further mistakes in the future."

Id. at 325-26.

In Hecht, the Court emphasized that judicial discretion "must be exercised in light of the large objectives of the Act." Id. at 331. The Court also indicated that any exercise of discretion "should reflect an acute awareness of the congressional admonition" in the statute at issue. Id.

The intent of Congress in enacting 49 U.S.C. § 11503 is clear:

> The purpose of S. 927 [now 49 U.S.C. § 11503] is to eliminate the long-standing burden on interstate commerce resulting from discriminatory State and local taxation of common and contract carrier transportation property. S. 927 has both a substantive and a procedural aspect. Substantively, it would amend the Interstate Commerce Act to declare unlawful, as an unreasonable and unjust discrimination against and an undue burden upon interstate commerce, a State or local tax rate, assessment, or collection upon the transportation property of a common or contract carrier at

> a higher level than upon property in the same taxing district. Procedurally, it would provide a remedy in Federal courts for common and contract carriers against the collection of the excessive portion of any tax based upon such unlawful assessment or rate.

S. Rep. No. 1483, 90th Cong., 2d Sess. at 1 (emphasis added). Thus, it is clear in light of the "large objectives of the [4-R] Act," that Congress intended for district courts to enjoin the collection of discriminatory taxes as the district court did below.

As in Hill, this Court might indeed be "hard pressed to find a statutory provision whose terms were any plainer" than 49 U.S.C. § 11503. In light of the clear congressional command to prevent discriminatory taxation of railroads, proof of a violation is ample predicate for the issuance of injunctive relief. This is also borne out by the numerous decisions which have confronted this issue under 49 U.S.C. § 11503.

B. The Ninth Circuit's Decision In This Case Is Consistent With Every Other Case Which Has Construed The Injunctive Relief Provisions Of 49 U.S.C. § 11503.

In affirming the district court's decision in this case, the Ninth Circuit relied on its decision in Trailer Train Co. v. State Board of Equalization, 697 F.2d 860 (9th Cir. 1983), cert. denied, ___ U.S. ___, 104 S. Ct. 149 (1983), another case arising under 49 U.S.C. § 11503. In that case, the Ninth Circuit stated:

> Finally, the Board argues that the district court erred in granting the preliminary injunction without first requiring the establishment of the standard equitable prerequisites for relief. We disagree.
>
> The standard requirements for equitable relief need not be satisfied when an injunction is sought to prevent the violation of a federal statute which specifically provides for injunctive relief. . . . Section 11503 clearly falls within this exception because its subsection (c) specifically authorizes a district court to grant injunctive relief to prevent a violation of the statute.

Id. at 868-69 (emphasis added, citations and footnotes omitted).

The Ninth Circuit's decision in Trailer Train is consistent with every other decision which has confronted this issue under 49 U.S.C. § 11503. In Tennessee v. Louisville & Nashville Railroad Co., 478 F. Supp. 199 (M.D. Tenn. 1979), aff'd. 652 F.2d 59 (6th Cir. 1981), cert. denied, 454 U.S. 834 (1981) (the first case to confront the issue of whether federal courts should grant injunctive relief under this statute), the court stated:

> Since Congress has expressly authorized federal courts to grant injunctive relief in furtherance of the express purposes of Section 306, it is not required that irreparable harm or inadequacy of legal remedies first be shown.

Id. at 210. The Tenth Circuit Court of Appeals in Atchison, Topeka & Santa Fe Railway Co. v. Lennen, 640 F.2d 255 (10th Cir. 1981), relied on the above-quoted language and an examination of 16 other

cases construing the injunctive relief provisions of ten different federal statutes, in upholding the railroads' right to injunctive relief under 49 U.S.C. § 11503. After analyzing these authorities, the Lennen court concluded:

> An analogy may be made in the wording of § 306 of the 4-R Act and the wording of many of the statutes involved in the cases cited above.

Id. at 260.

Since the Tenth Circuit's decision in Lennen and the Ninth Circuit's decisons in this case and Trailer Train, several courts have granted injunctive relief under 49 U.S.C. § 11503 on the basis of proof that discrimination against the railroads existed.[4]

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4. Santa Fe reproduced copies of several recent unpublished decisions granting injunctive relief under 49 U.S.C. § 11503 in the Appendix to its Brief before the Ninth Circuit.

C. The Legislative History Underlying The Enactment Of 49 U.S.C. § 11503 Does Not Require A Balancing Of Hardships As Petitioners Suggest.

Petitioners make an isolated reference in their Brief to the legislative history underlying 49 U.S.C. § 11503, in support of the proposition that district courts should not enjoin state taxation without first balancing the adverse impact on the community of granting such relief against the benefits to the railroad from such relief. The particular legislative history referred to in petitioners' Brief is taken out of context. Standing alone, it is also in conflict with other references contained in the voluminous 15-year legislative history antedating the enactment of 49 U.S.C. § 11503. When the language immediately preceding that portion of the legislative history quoted by petitioners is added to the short excerpt quoted in their Brief, the meaning becomes much clearer:

> Subsection (d) [now 49 U.S.C. § 11503(c)] establishes a new remedy for carriers who wish to challenge taxing authorities under this section. Under current procedure, a carrier must pay the tax which is being disputed, and then contest the collection of the tax in the state courts--with a final review possible in the United States Supreme Court. Subsection (d) allows jurisdiction of cases arising from this provision in the United States District Courts, thus, effectively allowing the carrier to seek an injunction before paying the disputed tax.

H.R. Rep. No. 94-725, 94th Cong., 1st Sess. at 77 (1975) (emphasis added).

Moreover, the following excerpt from a Report of the Senate Committee on Commerce clearly indicates that injunctive relief is available merely upon a showing by the railroads that discrimination exists:

> Paragraph (2) [now 49 U.S.C. § 11503(c)] provides that the district court shall have jurisdiction, upon complaint and after hearing, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain any State or subdivision or agency thereof, or any person from doing anything or performing any act declared unlawful under Paragraph (1) [now 49 U.S.C. § 11503(b)].

> The purpose of Paragraph (2) is to allow an aggrieved carrier to bring suit in a federal district court to challenge the excessive portion of a State or local transportation property tax. The committee intends that the carrier challenging the state tax shall have the burden of proof. If the carrier sustains the burden of proving that a state or local taxing agency is assessing, collecting, or imposing tax rates that are discriminatory, the federal district courts are authorized to enjoin the unlawful action.
>
> * * *
>
> . . . There is no need for a federal court to enjoin the tax in its entirety, only the discriminatory portion, and in most cases carriers are willing to pay that portion of the tax which is unchallenged while directing their litigation to the excessive portion. In the opinion of the committee, the remedy provided in S. 927 [now 49 U.S.C. § 11503] is clearly constitutional, and is fair to both the States and the carriers in the event of litigation.

S. Rep. No. 1483, 90th Cong., 2d Sess. at 11-13 (1968) (emphasis added).

The above quoted language helps to explain the excerpt relied upon by

petitioners in their Brief. Indeed, "[e]nactment of this section will not necessarily mean the Federal courts will enjoin all state taxation of rail property...." (Petition at 11) Instead, "[t]he Federal courts will be able to devise remedies that will not be burdensome," (Petition at 11-12), by enjoining only the discriminatory portion of the tax. However, this does not deprive the district courts of the express grant of jurisdiction to enjoin an imminent violation of the statute when the railroads meet their burden of proof. To hold otherwise would emasculate the purpose of the statute and undermine the procedural remedy which Congress specifically conferred. This is clearly contrary to the legislative intent, as evidenced by the following excerpt from the congressional history:

> The addition of the procedural remedy, by authorizing Federal

courts to enjoin collection of discriminatory taxes against interstate carriers, is consistent with the obligation of Congress to regulate interstate commerce, required under the Federal Constitution and is thereby a proper and necessary action of the Congress.

The committee is convinced of the need for a Federal court procedural remedy as provided in S.927 [now 49 U.S.C. § 11503]. Section 1341 of title 28, United States Code, prohibits district courts from enjoining, suspending or restraining the assessment, levy or collection of any tax under State law where a plain, speedy, and efficient remedy may be had in the courts of such State. The effect of this statute has been to close the doors of the Federal courts to carriers affected by discriminatory taxation. It has not, however, insured that the State courts provide carriers with a plain, speedy, and efficient remedy.

The testimony before the committee indicated that the present State procedures to challenge discriminatory State tax assessments are often difficult, time consuming, and not productive of material relief.

Id. at 5-6.

Congress struck a careful balance in enacting 49 U.S.C. § 11503. To date,

every case which has interpreted this statute has stated that the district courts shall have jurisdiction to issue injunctions to prevent tax discrimination whenever the railroad can meet its burden of showing that a violation is about to occur. Petitioners' suggestion that district courts must "balance the equities" before granting preliminary injunctions ignores all of these cases on the basis of an isolated, out-of-context reference taken from 49 U.S.C. § 11503's voluminous legislative history. As Justice Frankfurter might have responded to such an argument:

> "Balancing the equities" when considering whether an injunction should issue, is lawyers' jargon for choosing between conflicting public interests. When Congress itself has struck the balance, has defined the weight to be given the competing interests, a court of equity is not justified in ignoring that pronouncement under the guise of exercising equitable discretion.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 609-610 (1952) (Frankfurter, J., concurring).

The cases which have previously confronted this issue conclusively establish that the only showing required of a railroad to obtain a preliminary injunction under 49 U.S.C. § 11503 is: (1) That a violation is about to occur; (2) that the level of discrimination exceeds the threshhold level of five percent set forth in the statute; and (3) that there is a likelihood the railroad will prevail on the merits. The district court found that each of these elements had been established. The Ninth Circuit affirmed that decision. Accordingly, this Court should deny the Petition for a Writ of Certiorari.

D. Congress' Grant Of Jurisdiction To The District Courts To Prevent Violations Of 49 U.S.C. § 11503 Is Absolute.

Petitioners also attempt to mislead

this Court as to the nature of the grant of jurisdiction contained in 49 U.S.C. § 11503, by suggesting that the words "injunction" or "injunctive relief" do not appear in the statute.[5] (Petition at 11) The grant of jurisdiction to the district courts is absolute. Congress expressly

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5. As originally enacted, Section 306 of the 4-R Act stated that the district courts shall have jurisdiction "to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain or terminate any acts in violation of this section . . ." In the historical and revision notes following 49 U.S.C. § 11503 the revisors state:

> The words "such mandatory or prohibitive" and "interim equitable relief" are omitted as unnecessary in view of the Restatement. The word "prevent" is substituted for "prevent, restrain, or "terminate" to eliminate redundancy. The words "violation of" are substituted for "any acts in violation of" for clarity.

Thus, it is clear that the revisors who changed the language presently found in 49 U.S.C. § 11503(c), had no intention of emasculating Congress' express jurisdictional grant to the district courts to issue injunctive relief.

overrode the Tax Injunction Act in enacting 49 U.S.C. § 11503(c), and conferred jurisdiction on the federal courts to "prevent" violations. Hence, Congress has declared that injunctions are necessary whenever an imminent violation of the statute is demonstrated.

CONCLUSION

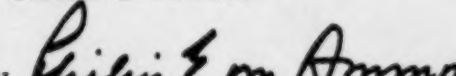
The decisions of the court of appeals in this case and in Trailer Train Co. v. State Board of Equalization, supra, are not in conflict with this Court's previous decisions in statutory injunction cases. Indeed, a careful reading of all of these cases clearly shows that the guiding principle has always been for the courts to exercise their equity discretion to implement the purposes of the particular statute at issue. Congress struck the balance under 49 U.S.C. § 11503 and specifically empowered the district courts to issue injunctions to carry out the intent of the legislation.

Santa Fe made a prima facie showing of the elements required to obtain a preliminary injunction under 49 U.S.C. § 11503. The district court also held that an injunction should issue even if petitioners' "equitable considerations" were deemed relevant. The Ninth Circuit summarily affirmed that decision.

Therefore, Santa Fe requests this Court to deny the Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

RESPECTFULLY SUBMITTED this 10th day of February, 1984.

FENNEMORE, CRAIG, von AMMON,
UDALL & POWERS

By 

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APPENDIX

49 U.S.C. § 11503

§ 11503. Tax discrimination against rail transportation property

(a) In this section--

(1) "assessment" means valuation for a property tax levied by a taxing district.

(2) "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

(3) "rail transportation property" means property, as defined by the Interstate Commerce Commission, owned or used by a rail carrier providing tansportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

(4) "commercial and industrial property" means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) assess rail transportation property at a value that has a

higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) levy or collect a tax on an assessment that may not be made under clause (1) of this subsection.

(3) levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title.

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial roperty in the same assessment jurisdiction. The burden of proof in

determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section--

> (1) an assessment of the rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and
>
> (2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax ratio rate applicable to taxable property in the taxing district.

Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1445.